



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2023-0203; FRL-10757-02-R9]

Approval and Promulgation of Implementation Plans; Revisions to the California State

Implementation Plan; San Francisco Bay Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action under the Clean Air Act (CAA or “Act”) to approve a revision to the San Francisco Bay Area portion of the California State Implementation Plan (SIP). This revision consists of updated transportation conformity procedures related to the interagency coordination on project-level conformity and exchange of travel data for emissions inventories developed for air quality plans and regional transportation conformity analyses. This action updates the transportation conformity criteria and procedures in the California SIP.

DATES: This action is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2023-0203. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with a disability who

needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Michael Dorantes, Geographic Strategies and Modeling Section (AIR-2-2), EPA Region IX, (415) 972-3934, *dorantes.michael@epa.gov*.

SUPPLEMENTAL INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

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I. Summary of Proposed Action

On July 27, 2023, the EPA proposed to approve a revision to the California SIP concerning transportation conformity procedures for the San Francisco Bay Area.¹ The California Air Resources Board (CARB) submitted “The San Francisco Bay Area Transportation Air Quality Conformity Protocol - Conformity Procedures” and “The San Francisco Bay Area Transportation Air Quality Conformity Protocol - Interagency Consultation Procedures,” on May 17, 2021. We refer to these documents together as the “San Francisco Bay Area conformity SIP submittal.”² CARB submitted a prior version of the San Francisco Bay Area conformity SIP to the EPA for approval on December 20, 2006. The EPA approved this SIP revision on October 12, 2007.³ The agencies responsible for developing and updating the San Francisco Bay Area conformity SIP – the Metropolitan Transportation Commission (MTC), the Bay Area Air Quality Management District (BAAQMD), and the Association of Bay Area Governments (ABAG), in

¹ 88 FR 48406 (July 27, 2023).

² In addition to other supporting documents, the submittal package included the following documents: “San Francisco Bay Area Transportation Air Quality Conformity Protocol,” Revised: February 26, 2020; “Amended and Restated Memorandum of Understanding Between the Metropolitan Transportation Commission and the Sacramento Area Council of Governments,” (September 11, 2018); and a letter dated May 6, 2021, (submitted electronically May 17, 2021), from Richard W. Corey, Executive Officer, CARB, to Deborah Jordan, Acting Regional Administrator, EPA Region IX, Subject: San Francisco Bay Area State Implementation Plan Amended Transportation Air Quality Conformity Protocol. These documents are available in the docket for this rulemaking.

³ 72 FR 58013 (October 12, 2007).

consultation with the Sacramento Area Council of Governments (SACOG) – have since further amended the roles and responsibilities for implementing the transportation conformity interagency consultation process and for coordinating travel activity data sharing. The San Francisco Bay Area conformity SIP submittal also reflects an update to a memorandum of understanding that exists between MTC and SACOG as an agreement regarding federal conformity procedures and programming of federal Congestion Mitigation and Air Quality funds in Solano County.⁴

In our proposal, we evaluated the San Francisco Bay Area conformity SIP submittal against the statutory and regulatory requirements of the CAA, 40 CFR part 93, and 40 CFR 51.390, which govern state procedures for transportation conformity and interagency consultation and concluded that the submittal meets these requirements. Furthermore, the comment period and public hearing held by MTC for this SIP revision satisfy the requirements of CAA section 110(l) and 40 CFR 51.102. A technical support document (TSD) is included in the docket for this rulemaking. Specifically, in our TSD, we identify how the submitted procedures satisfy requirements under 40 CFR 93.105 for interagency consultation with respect to the development of transportation plans and programs, SIPs, conformity determinations, the resolution of conflicts, the provision of adequate public consultation, and our requirements under 40 CFR 93.122(a)(4)(ii) and 93.125(c) for enforceability of control measures and mitigation measures. Please refer to our TSD and notice of proposed rulemaking for additional information regarding the content of the revised San Francisco Bay conformity SIP submittal and our review.

II. Public Comments and EPA Responses

The 30-day public comment period for the notice of proposed rulemaking closed on August 28, 2023. During this period, a member of the public submitted two identical comments

⁴ See “Metropolitan Transportation Commission Resolution No. 2611. Revised, MTC/Sacramento Area Council of Governments (SACOG) Memorandum of Understanding (MOU) for Air Quality Planning in Eastern Solano County” and Metropolitan Transportation Commission Resolution No. 3757, “Re: Approval of San Francisco Bay Area Transportation Air Quality Conformity Protocol,” which is included in the docket for this rulemaking.

to the EPA in support of the proposed approval. The full text of these comments is available for viewing in the docket for this rulemaking.

III. EPA Action

In accordance with section 110(k)(3) of the Act, and for the reasons discussed in our proposed rulemaking and summarized in this document, we are finalizing our approval of the San Francisco Bay Area conformity SIP submittal as a revision to the California SIP. The revision will be incorporated into the San Francisco Bay Area portion of the California SIP and thereby replace the previous revision approved on October 12, 2007.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this rulemaking does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. If finalized, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of EO 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the *FEDERAL REGISTER*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate Matter, Reporting and recordkeeping requirements.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: December 20, 2023.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(349)(i)(A)(2) and (c)(608) to read as follows:

§ 52.220 Identification of plan.

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(c)	*	*	*	
(349)	*	*	*	
(i)	*	*	*	
(A)	*	*	*	

(2) Previously approved on October 12, 2007, in paragraph (c)(349)(i)(A)(1) of this section and now deleted with replacement in paragraph (c)(608)(i)(A)(1) of this section: the San Francisco Bay Area Transportation Air Quality Conformity Protocol—Conformity Procedures (July 26, 2006) and San Francisco Bay Area Transportation Air Quality Conformity Protocol—Interagency Consultation Procedures (July 26, 2006), adopted by BAAQMD on July 19, 2006, by ABAG on July 20, 2006, and by MTC on July 26, 2006.

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(608) San Francisco Bay Area Transportation Air Quality Conformity Protocol—Conformity Procedures and Interagency Consultation Procedures was submitted electronically on May 17, 2021, by the Governor’s designee as an attachment to a letter dated May 6, 2021.

(i) [Reserved]

(ii) *Additional materials.* (A) Association of Bay Area Governments (ABAG), Bay Area Air Quality Management District (BAAQMD), and Metropolitan Transportation Commission (MTC).

(1) The San Francisco Bay Area Transportation Air Quality Conformity Protocol—Conformity Procedures (February 26, 2020) and San Francisco Bay Area Transportation Air Quality Conformity Protocol—Interagency Consultation Procedures (February 26, 2020), adopted by MTC on February 26, 2020, BAAQMD on March 4, 2020, and by ABAG on April 23, 2020.

(2) [Reserved]

(B) [Reserved]

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